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*July 8, 2019*

*Senate Special Committee on Conduct*



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SENATE SPECIAL COMMITTEE ON CONDUCT

July 8, 2019

Monday

COMMITTEE MEMBERS

Senator Floyd Prozanski - Chair

Senator James Manning

Senator Tim Knopp

Senator Alan Olsen

Transcribed from recording by:

Ms. Sara Fahey Wilson

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## P R O C E E D I N G S

SENATOR PROZANSKI: Good morning, everyone. I would like to say thank you for being here. We're going to go ahead and open up our hearing. This is an invited testimony public hearing for the Senate Special Committee on Conduct.

Today is Monday, July 8th. And before we get started, I wanted to kind of go over a few things as to how we're going to be proceeding today.

This is -- and give some clarification. I've seen some of the reports in the media, and I believe that there's been some confusion that has gone forward.

But before I get to -- first what I want to do is thank Senator Olsen, who is stepping in and subbing in for Senator Thatcher today. Because of the timing of the committee, she had already had other obligations that she could not break from, and so, Senator Olsen, thank you very much for being part of the committee.

The purpose of the hearing today is to determine if the statements that were made by Senator Boquist on June 19th of this year towards President Courtney on the floor as well as

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1 statements that were made shortly thereafter toward  
2 the state police as to whether or not they  
3 constitute a credible threat of violence, and  
4 whether those statements have caused members of the  
5 Oregon State Legislature or the branch employees to  
6 report concerns including for safety and the  
7 well-being of themselves and others and to subject  
8 themselves to intimidation and/or a hostile work  
9 environment.

10 The reports that are -- that people  
11 are fearful and scared of coming to work,  
12 investigator has made these recommendations as to  
13 being -- and the reports to be credible.

14 We will be determining whether or not  
15 the committee agrees with this, and at this point  
16 looking at what, if any, recommendations that we'll  
17 move forward with. The recommendations that have  
18 been -- has come from the report from the reporter  
19 is that immediate measures shall be taken to ensure  
20 that the capital is free from threats of or actual  
21 violence and intimidation.

22 Recommends -- also she recommended  
23 that now allowing Senator Boquist access to the  
24 workplace based on his statements from June 19th  
25 until the legislative branch can determine that

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1 Senator Boquist will not carry out or incite others  
2 to carry out the violence suggested in those  
3 statements within the workplace, toward the branch  
4 investigating those reports.

5 So today I want to make certain  
6 everyone understands that today's hearing is to  
7 determine whether or not Senator Boquist violated --  
8 is not to determine whether Senator Boquist violated  
9 Rule 27 but, instead, to determine whether or not  
10 the state -- the Senate should impose restrictions  
11 or conditions on Senator Boquist while the -- to  
12 allow for the workplace to be safe and free from any  
13 type of allegations of -- based on fear or  
14 threatened violence in the workplace.

15 Today's hearing is not a judicial or a  
16 court proceeding but, instead, is a legislative  
17 committee hearing. The committee will, in fact, be  
18 taking invited testimony. We will provide Senator  
19 Boquist an opportunity to address the committee if  
20 he would like to as to posing any current threat of  
21 violence in the workplace that would cause Senator  
22 Boquist to be denied access to the capital.

23 There will potentially be a work  
24 session today. That will be determined as we go  
25 through this process. And at that point if we are,

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1 we will be considering some suggested motions,  
2 potentially alternative motions, and also whatever  
3 other matters that we want to take up.

4 I do want to put on the record as well  
5 two things. First of all, I have had conversations  
6 with Senator Boquist since the conduct committee was  
7 posted to have this hearing. During that time, at  
8 one point I used the term "complaint," when I  
9 probably should have been using the term "reports."

10 As I stated in an email to him, I'm  
11 not really familiar with the employment law area.  
12 My practice of law is as a prosecutor in criminal  
13 law. So I more than likely misused the term  
14 "complaints," when it should have been the term  
15 "reports."

16 I believe that, in fact, has caused  
17 some people some confusion, so I wanted to put the  
18 record -- set the record straight.

19 The last thing I want to put on the record  
20 is the delay in the hearing date of today. These  
21 statements were, in fact, made on June 19th. For  
22 most of the individuals in this room probably knows  
23 that there was a protest within the Senate where  
24 Republican members left the following day for about  
25 nine to ten days, and then by the time we got back

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1 and finished our work was on June 29th and June  
2 30th, and so this was the first opportunity, being  
3 today, to get all of the committee members together  
4 to be able to go forward.

5 So with that, I wanted to see if  
6 anyone has any opening statements from the  
7 committee.

8 Senator Olsen?

9 SENATOR OLSEN: No, sir.

10 SENATOR PROZANSKI: Senator Knopp,  
11 Senator Manning?

12 All right. All right. Now, at this  
13 point what we're going to do is the formality, and  
14 that is organizing our meeting. And we have a set  
15 of -- do we have the --

16 UNIDENTIFIED SPEAKER: Everybody has a  
17 hard copy of the committee rules.

18 SENATOR PROZANSKI: Okay. So I'm  
19 going to ask for Senator Knopp, if you will make a  
20 motion on the adoption of the special -- the Senate  
21 Special Committee on Conduct's interim rules.

22 SENATOR KNOPP: Mr. Chair, I move to  
23 adopt the Senate Special Committee on Conduct  
24 2019-2020 interim rules.

25 SENATOR PROZANSKI: All right.

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1 Senator Knopp moves for the adoption of the Senate  
2 Special Committee on Conduct 2019-'20 interim rules.  
3 Is there any questions?

4 Any objections?

5 So ordered.

6 Now, at this point what we're going to  
7 do is open up for our public hearing. As I said,  
8 this will be -- as noted, it will be invited  
9 testimony. And at this point I think we'll ask for  
10 -- and I'm not sure if we want Jessica Nieling to  
11 come up with Brenda Bumgart -- I'm not sure how we  
12 want to proceed on that.

13 Brenda, why don't you just go ahead  
14 and come on up. So we're going to start with  
15 Ms. Burkhardt's -- Bumgart's testimony.

16 And I want to thank you for being  
17 here. If you'd be so kind as to put your name on  
18 the record, and then I think what would be best is  
19 for you to start off as an overview and giving us a  
20 context of how your firm, Stole Reeves, became  
21 involved in this matter.

22 MS. BUMGART: Thank you. Good  
23 morning, Chair Prozanski, members of the committee.  
24 For the record, my name is Brenda Bumgart. I'm a  
25 partner at the Stole Reeves firm in Portland Oregon.

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1 Thank you for inviting me to speak with you this  
2 morning.

3 How I became involved in this matter  
4 is in March of this year my firm was contracted by  
5 the branch to serve as an outside investigator to  
6 handle matters with respect to personnel Rule 27.  
7 That contract is a public record. It was effective  
8 March 25th, 2019, and that sets forth the scope of  
9 my firm's services, including my services to the  
10 branch.

11 In essence, I have been retained as  
12 outside counsel, and that's the capacity in which I  
13 serve before you today and the role that I undertook  
14 when I issued my June 25th memorandum.

15 SENATOR PROZANSKI: All right.

16 MS. BUMGART: The contract -- I just  
17 want to point out, Chair Prozanski and members, it  
18 talks about the scope of the services -- and this is  
19 on page 2 and 3 -- that the role of myself and my  
20 firm shall be with respect to assessment, to assist  
21 the branch with assessing matters, concerns, or  
22 complaints brought forward by employees under Rule  
23 27, evaluation of those concerns in which we are  
24 called upon to exercise our expertise and our  
25 judgment and our experience in consultation with the

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1 branch, and then finally should there be a need for  
2 a formal investigation under Rule 27, we would serve  
3 in that role as an outside investigator, issue a  
4 formal finding and recommendation.

5 SENATOR PROZANSKI: Okay. Thank you.

6 And did you have reason to issue a --  
7 what's titled Confidential Memorandum to Jessica  
8 Nieling and Dexter Johnson dated June 25th?

9 MS. BUMGART: I did -- I did, Chair  
10 Prozanski. And would you like me to speak to the  
11 impetus for that?

12 SENATOR PROZANSKI: Yes. My  
13 understanding, just for the record, regarding  
14 Senator Boquist's, slash, interim findings --  
15 finding and recommendations.

16 MS. BUMGART: Correct. So my memo is,  
17 as you referenced -- is dated June 25th, 2019. I'm  
18 hopeful that that speaks for itself.

19 On about June 19th I began receiving  
20 reports with respect to the senator's comments that  
21 the chair referenced earlier on the Senate floor  
22 directed to President Courtney and then shortly  
23 thereafter to the media. The reports, as I  
24 understood them, were continuing to come in in  
25 somewhat of a flurry. They included reports from

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1 appointing authorities who have an obligation to  
2 report concerns that conduct may violate Rule 27,  
3 concerns from staff, and concerns from members.

4 My immediate response to the branch as  
5 outside counsel was -- excuse me -- what steps --  
6 are the branch -- is the branch taking to ensure  
7 that these threats will not be carried out in the  
8 workplace and/or that employees are not continuing  
9 to be subjected to an intimidating, hostile, or  
10 perceived unsafe workplace while this is ongoing.

11 So in the course of that, I saw it fit  
12 to issue this interim finding and recommendation  
13 that -- that pointed out the egregiousness of the  
14 conduct. The -- my findings were based purely on  
15 those two public statements. I reviewed personally  
16 the statements made by Senator Boquist on the floor  
17 of the Senate. I watched that on OLIS. I reviewed  
18 the statements to KGW reporter, Pat Dorris, and  
19 those were the facts on which I relied upon to make  
20 this recommendation.

21 I would also add that my  
22 recommendation would be the same whether or not I  
23 found a facial violation of Rule 27. This  
24 investigation is ongoing. I did issue an interim  
25 finding because I do believe that those statements

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1 on their face run afoul of Rule 27, which is quite  
2 broad, and talks about preventing a work environment  
3 that is unsafe, intimidating, and hostile.

4 Workplace harassment under Rule 27 is  
5 defined more broadly than unlawful harassment under  
6 ORS 659(a). And my recommendation would be the  
7 same.

8 I would also add that my  
9 recommendation -- I understand that we're dealing  
10 with a different set of circumstances here in the  
11 public setting, and with respect to the conduct of a  
12 sitting senator who does have certain First  
13 Amendment rights. I'm not here to speak about  
14 those. That's not my role.

15 But I -- in taking a step back and  
16 looking at the obligation of the branch to ensure  
17 that its employees, members of the branch, members  
18 of the public who walk through these doors every  
19 day, are not going to be subjected to a workplace  
20 that is -- where they feel there are threats of  
21 violence, or that is intimidating or unsafe, that is  
22 the immediate cause for concern that resulted in my  
23 June 25th memorandum.

24 SENATOR PROZANSKI: All right. Do you  
25 have anything else you'd like to add at this time?

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1 I'm going to open it up for questions.

2 MS. BUMGART: I would just add that --  
3 that really in any workplace this is standard  
4 operating procedure, that if there are reported  
5 threats of violence, or even less -- oftentimes if  
6 there are reports of threatened retaliation, that is  
7 prudent for the employer to take an interim step,  
8 which is not disciplinary. It's -- it is merely to  
9 Band-Aid the situation to ensure that the employer  
10 has an opportunity to look into the concerns that  
11 are raised, to reach conclusions about them, and  
12 then to take prompt remedial measures to ensure that  
13 this conduct isn't either carried out in the  
14 workplace or that it curbs that conduct.

15 So if -- I understand we have a unique  
16 situation here, and there are other factors in play,  
17 but if we are looking at this through the lens of  
18 what an employer's obligated to do, under the law,  
19 under Rule 27, the branch has this obligation just  
20 the same, I believe.

21 SENATOR PROZANSKI: All right. Thank  
22 you.

23 For clarification, let me just start  
24 with that because -- since we're all on that  
25 subject. It's my understanding that based on other

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1 issues of conduct, not including -- not representing  
2 Senator Boquist, but prior issues that have occurred  
3 in this building, there had been a BOLI agreement  
4 and settlement in the Jeff Cruz matter, and that at  
5 that point my understanding is that BOLI did, in  
6 fact, identify us as a legislative branch to be  
7 basically an equivalent of an employer and having  
8 the same duties and obligations as a private  
9 employer would have in their workplace.

10 MS. BUMGART: I think that's correct,  
11 Senator, and that certainly is part of the backdrop  
12 with which I approached my -- my obligations to the  
13 branch today coming out of that BOLI settlement,  
14 ensuring that there is compliance with that and that  
15 there is compliance with Rule 27.

16 SENATOR PROZANSKI: All right. Thank  
17 you.

18 I'm going to open up for questions for  
19 Ms. Bumgart. First, Senator Manning had his hand up  
20 first, and then we'll come back to Senator Knopp.

21 SENATOR MANNING: Thank you. Thank  
22 you, Mr. Chair.

23 Ms. Bumgart, thank you for being here  
24 this morning. Just a general question. I think you  
25 had mentioned that there were other complaints.

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1 Without identifying who complained or anything, what  
2 was the number of complaints, if that's permissible?

3 MS. BUMGART: So, Chair Prozanski,  
4 Senator Manning, and members, I would answer it this  
5 way. I think that given the ongoing nature of this  
6 investigation, and I would say that I'm at the  
7 outset of the intake procedure, I am continuing to  
8 receive reports. I have not yet made an evaluation  
9 whether those are formal or informal under Rule 27,  
10 whether one or more of them will proceed with me  
11 conducting a formal outside investigation.

12 If that is the case, of course, the  
13 protocol of Rule 27 will be followed. Senator  
14 Boquist at some point would be entitled to those  
15 formal complaints. He, of course, will -- I will  
16 invite a meeting with him to discuss -- I mean, that  
17 process will be followed.

18 At this point I would say I don't know  
19 that I can give you an exact number, but there are  
20 multiple. And the concerns, also, are beyond these  
21 statements. There are other concerns that are being  
22 raised as well. But I think for purposes of  
23 protecting the integrity of the investigation,  
24 that's probably as comfortable as I am going today  
25 unless, of course, the committee would like to hear

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1 more.

2 I'm trying to balance those interests  
3 and maintain the integrity of the investigation for  
4 both the senator and those involved in bringing the  
5 concerns forward.

6 SENATOR PROZANSKI: All right. Thank  
7 you. Senator Knopp?

8 SENATOR KNOPP: Thank you, Mr. Chair,  
9 I have multiple questions.

10 So, Brenda, as -- as you engaged in  
11 looking at these statements, did you interview  
12 Senator Boquist?

13 MS. BUMGART: Mr. Chair and Senator  
14 Knopp, I did not. I certainly thought about that  
15 because that is typically a normal process. Before  
16 there is a finding, or certainly a conclusion of the  
17 investigation, it is normal process, of course, to  
18 interview the individual about whose behavior is at  
19 issue.

20 I did not here, solely because I made  
21 my recommendation -- my finding and my  
22 recommendation based solely on those public  
23 statements which I found to be irrefutable. And,  
24 frankly -- and one thing I should point out -- this  
25 is about the effect on the recipients' intent in

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1 these sorts of employment situations. Whether or  
2 not a hostile or intimidating workplace is created,  
3 the intent of the actor, if you will, doesn't drive  
4 that inquiry. It's the effect on the recipients.

5 And both the law and Rule 27 talk  
6 about the perspective of the reasonable person. So  
7 from my review of those two statements on the Senate  
8 floor and then to the KGW reporter, I believe those  
9 sufficient, and my recommendation is based solely on  
10 those facts.

11 SENATOR KNOPP: Follow-up?

12 SENATOR PROZANSKI: Yes.

13 SENATOR KNOPP: Thank you, Mr. Chair.

14 Brenda, is -- there is no formal  
15 complaint currently. Is that correct?

16 MS. BUMGART: Mr. Chair, and Senator  
17 Knopp my -- a formal complaint, if we are talking  
18 about in terms of Rule 27-6, I have not yet done an  
19 intake procedure and made a determination that a  
20 complaint is elevated to the formal level that the  
21 individual would like to proceed down that road. We  
22 certainly have complaints, reports, if you will,  
23 that may evolve into that. I think what's important  
24 is that when I issued the June 25th memorandum, it  
25 was not linked to any informal or formal complaint.

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1 It was based on reports, some of which just came  
2 orally to me.

3 SENATOR PROZANSKI: Follow-up?

4 SENATOR KNOPP: Thank you, Mr. Chair.

5 So, Brenda, the -- the reports that  
6 came to you, did -- did the Oregon State Police or  
7 the Senate president -- were they part of those  
8 reports? Did they make reports in this case?

9 MS. BUMGART: I did not receive any  
10 reports from the Oregon State Police. I'm aware  
11 generally, and I think after the issuance of my  
12 memorandum, that they did have some communication,  
13 obviously, with the branch. They were undertaking  
14 their own assessment of the threat to the branch.  
15 They were involved. But I have not had any direct  
16 communication or received any reports from the  
17 Oregon State Police.

18 And the same, I believe, from the  
19 Senate president's office. I saw some public -- I  
20 think two public memorandums issued, one jointly by  
21 President Courtney and Speaker Kotek, and then  
22 another memorandum from the branch.

23 SENATOR KNOPP: Thank you.

24 MS. BUMGART: Thank you.

25 SENATOR PROZANSKI: Senator Olsen?

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1                   SENATOR OLSEN: Thank you very much,  
2                   Mr. Chair. And thank you very much for the opening  
3                   comments. It's a pleasure to be here.

4                   Ms. Bumgart, in your June 25th  
5                   memorandum you state, on their face, they constitute  
6                   credible threats of violence.

7                   Is that your opinion or is that a  
8                   fact?

9                   MS. BUMGART: I think my opinion  
10                  primarily, although I think both Senator -- and I  
11                  want to be clear I am not a criminal lawyer. I'm  
12                  not making an assessment whether or not these  
13                  threats in combination or on their own rose to some  
14                  level of criminal behavior. That's not -- that's  
15                  not my scope.

16                  What I mean by credible threats is  
17                  this is not a situation of a he-said/she-said. For  
18                  example, I did not receive this information that  
19                  someone reported that Senator Boquist had made these  
20                  statements or had -- you know, where we have  
21                  secondhand information. These were statements that  
22                  I observed that he made -- that he made publicly.

23                  So from my perspective, from the  
24                  employment perspective, that -- where you have an  
25                  employee of the branch who has gone on record

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1 publicly and made these statements, and at least by  
2 the time I had issued my memorandum, and I think  
3 currently as we sit here today those have not been  
4 recanted, that was the basis of my use of the term  
5 "credible threats" there, Senator.

6 SENATOR PROZANSKI: Follow-up?

7 SENATOR OLSEN: Yes. Thank you.

8 So I really want to be clear. This  
9 was your opinion that this was a credible threat?

10 MS. BUMGART: I think I said it's  
11 both. I think it's my opinion in my role as an  
12 outside investigator retained employment attorney  
13 for the branch to look into concerns brought under  
14 Rule 27. And I think that -- I guess I would follow  
15 that with when viewing the statements as they were  
16 made, I think on their face they are credible  
17 threats, factually.

18 SENATOR PROZANSKI: Follow-up?

19 SENATOR OLSEN: Yes, thank you very  
20 much.

21 You also state that these threats of  
22 violence directly have caused members and branch  
23 employees to report concerns -- and I quote this  
24 from your memorandum -- but you stated that you  
25 don't know how many members there are and what

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1 branch employees, so aren't we a little bit  
2 premature being here if your report and your  
3 investigation is not complete?

4 Since we don't know the number of  
5 members, you stated that there's been no formal  
6 complaint, so aren't we a little bit premature being  
7 here?

8 MS. BUMGART: Chair Prozanski, Senator  
9 Olsen, I don't think we're premature at all. In  
10 fact, I think if we could evolve in having this  
11 conversation on June 20th, that would have been in  
12 the best interests of the branch from the risk  
13 perspective where I sit.

14 The point about this recommendation is  
15 that -- and I would do this the same for any client,  
16 for any employer -- if reports are brought forward  
17 by employees that they have a concern about the  
18 safety and well-being of themselves or others in the  
19 workplace, whether those are threats based on  
20 threats of violence, whether they are threats of  
21 intimidation, whether they are threats of  
22 retaliation, it is incumbent upon the employer to  
23 evaluate what, if any, steps it must take  
24 immediately to ensure that these employees are not  
25 further subjected to this while it has the

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1 opportunity to look into it and reach some  
2 conclusions and then decide what, if any, steps it  
3 will take.

4 So I would say we are not premature  
5 because I believe, as Senator Prozanski set forth at  
6 the outset of the meeting, that my understanding of  
7 our purposes here today is not to -- is not to  
8 explore -- this is an interim finding. The  
9 investigation is ongoing. At some point I expect we  
10 will be back together and talking about a formal  
11 finding and recommendation. But until that point, I  
12 would urge the branch to focus on the  
13 recommendation, what steps it sees fit to take to  
14 ensure that it may maintain an intimidating --  
15 intimidation-free and safe work environment while  
16 this investigation is -- is concluded.

17 SENATOR OLSEN: Follow up?

18 SENATOR PROZANSKI: Yes.

19 SENATOR OLSEN: Thank you. Thank you  
20 for the latitude, I appreciate it.

21 SENATOR PROZANSKI: You bet.

22 SENATOR OLSEN: It's interesting that  
23 you -- that -- your statement is correct, we need to  
24 have a harassment-free workplace. We need to have  
25 an environment where we can all certainly work and

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1 not be afraid to be here. But it concerns me that  
2 this action is moving forward with respect to  
3 Senator Boquist and his statements but yet you can't  
4 tell us who has brought in a complaint or who has  
5 told you that they have concerns.

6 And that bothers me in the fact that  
7 we are moving an issue forward without a statutory  
8 statement from anyone stating that I'm concerned.  
9 And I don't see that in your report. You just state  
10 that violence has caused members and branch  
11 employees to report concerns.

12 Well, that being said, we should be  
13 able to ask those members what their concern is.  
14 Was it a concern of violence? Was it a concern that  
15 we'd have more state police in the building? What  
16 exactly was the concern? So we're moving this --  
17 this -- this issue forward without full  
18 documentation, without full evidentiary evidence to  
19 sustain what we're going to talk about.

20 Can you talk to that?

21 MS. BUMGART: Yes. Mr. Chair and  
22 Senator Olsen and members, I'm happy to speak more  
23 about this.

24 One is I don't view this situation,  
25 and particularly our discussion here today and why

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1 we're here, as -- we are not -- the investigation  
2 has not been concluded, and I don't believe this  
3 type of situation would be in the best interest of  
4 the branch to wait a month or two from now until  
5 that is done where you can have the full report as  
6 to who raised concerns.

7 I think that this type of situation is  
8 grave, it is egregious, it is serious, it is one  
9 that puts the branch at risk if it does not look at  
10 this from where you sit today and decide what, if  
11 any, interim measures -- interim measures need to be  
12 taken to again ensure that employees are not  
13 continued to be subjected to an intimidating or  
14 unsafe work environment.

15 I would also add, because I hear in  
16 your question the concern that, well, who is the  
17 individual? What might their motivations be, if  
18 that's really what you're getting at? And again,  
19 that will be vetted in the investigation.

20 And to the extent that they are -- you  
21 know, that these are somehow not credible reports,  
22 that will be vetted. But I don't think that will be  
23 the case.

24 And let me follow that by saying even  
25 without any employer reports, let's assume for a

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1 moment that these statements were made on the Senate  
2 floor and then shortly thereafter to the reporter,  
3 and no employee came forward, no appointing  
4 authority, no employee came forward. Why? Might  
5 that be their concern for their own safety? They  
6 are concerned about retaliation? My recommendation  
7 would be the exact same.

8 The branch knows now. It has reason  
9 to know that there could be threats of violence  
10 carried out in its workplace; that it could be  
11 maintaining a workplace that is subjecting employees  
12 to intimidation, fear. My recommendation would be  
13 the exact same.

14 So I'd encourage the committee not to  
15 focus on the who, or the what, or the why, but on  
16 the comments made and the obligation of the branch  
17 as the employer to take interim steps to make sure  
18 that its workplace is safe and free of intimidation.

19 I hope that answers your question.

20 SENATOR PROZANSKI: Can I just follow  
21 up on that, the last part? During the  
22 investigation, would you add that to your statement  
23 in the sense of taking steps that are reasonable and  
24 necessary during this investigation that's broader  
25 than this interim step that you've brought to us?

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1 MS. BUMGART: Chair Prozanski, is your  
2 question are there other recommendations?

3 SENATOR PROZANSKI: No. I just -- in  
4 the sense of what my understanding is and what I'm  
5 trying to ensure is that we're here today to  
6 determine what, if any, interim steps we need to  
7 take as a body to ensure a workplace that's free of  
8 intimidation and threats, and that's based on the  
9 ongoing investigation that you're doing now, that at  
10 some point you're going to make determinations as to  
11 whether the reports that you received are going to  
12 move forward as either informal or formal  
13 complaints?

14 MS. BUMGART: Correct.

15 SENATOR PROZANSKI: But while you're  
16 doing that, there still is a need for the  
17 employer -- in this case the legislative branch --  
18 to ensure the workplace is free of those concerns?

19 MS. BUMGART: Yes, I think that's --  
20 that is correct. And again, this is a fairly common  
21 interim measure for employers to take. This is not  
22 something out of the blue. This is really a  
23 no-brainer in these kinds of situations. And that  
24 is to the extent there have been these allegations,  
25 in order to ensure that the integrity -- in order to

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1 ensure the integrity of the investigation, in order  
2 to ensure that employees are not subjected to  
3 further fear for their safety, a workplace that they  
4 perceive to be intimidating or harassing, these are  
5 common steps that are taken to put the alleged --  
6 the person about -- the person whose conduct is at  
7 issue, to put them out on a administrative leave.

8 And I understand that has other  
9 implications here. And certainly when I was  
10 evaluating this in -- in or around the time the  
11 comments were made, and before making my  
12 recommendation, some of the questions I had is,  
13 yeah, my concern is really about protecting the  
14 workplace. And I'm not making an opinion about  
15 whether Senator Boquist would be allowed to continue  
16 to do his job or not, and if so, in what fashion.

17 Some of the questions I pose: Might he be  
18 able to continue to vote or do other things but just  
19 remotely so? This is, again, a very common  
20 situation. I understand the overlay here makes it  
21 more difficult, but that is not a reason for the  
22 branch -- the branch not to -- not to act.

23 And I would just add that the other, you  
24 know, sort of what is the risk to the branch apart  
25 from the obvious to the extent there are, you know,

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1 threats of violence, I think we can all understand  
2 that, but some more nuanced employment threats if  
3 the branch does not consider and take reasonable  
4 steps to ensure that it will maintain a safe and  
5 harassment-free workplace during this period of  
6 employment concerns.

7 Are employees still coming to work and are  
8 they working in an environment where they believe  
9 they are subjected to a stressful workplace, a  
10 hostile workplace, an intimidating workplace? I  
11 mean, those can and do result in workers'  
12 compensation claims. There is opportunities then  
13 for further risk of retaliation. Those sorts of  
14 things.

15 So those are general concerns employers  
16 have in these situations where there has been an  
17 issue, it's been brought to the forefront, there's a  
18 process by which it needs to be vetted, and before  
19 those conclusions are made sometimes there needs to  
20 be interim steps taken.

21 SENATOR PROZANSKI: All right. Thank  
22 you. Senator Olsen?

23 SENATOR OLSEN: Thank you, Mr. Chair.  
24 Since we're not in session any longer, the absence  
25 of all senators, does that relieve some of the

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1 tension in the workplace?

2 MS. BUMGART: Mr. Chair, Senator  
3 Olsen, I think that's a fair question. I think  
4 it's -- it probably does, to an extent, take away  
5 some of the immediate concern apart from if the  
6 Senate was in session and Senator Boquist was going  
7 to be walking on the floor. But I don't view it as  
8 something that should be dispositive of this  
9 committee or the Senate's decision with respect to  
10 this matter.

11 I mean, it's a bit fortuitous, if you  
12 will, that time has passed, but the threats are the  
13 same, and I would encourage this committee to  
14 consider them in what steps it may take in response,  
15 the same as if we were having this discussion on  
16 June 20th and the session was still ongoing.

17 And that is because, you know, the  
18 statements were made, the investigation needs to  
19 proceed, and I don't believe they become any less  
20 serious due to the passage of time.

21 And I would couple that with I don't  
22 believe I have seen -- at least again at the time I  
23 issued my June 25th memorandum and to the present --  
24 a statement by Senator Boquist that was somehow --  
25 expressed remorse, recant these statements, provide

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1 other assurances in that respect that might --  
2 again, I don't think that would be dispositive.  
3 That might be some factors that the committee would  
4 take into consideration.

5 SENATOR PROZANSKI: Follow-up?

6 SENATOR OLSEN: Yes. Thank you very  
7 much.

8 That being said, in an everyday  
9 workplace, not the -- per se the capital -- but in  
10 an everyday workplace, if a derogatory statement or  
11 an inflective statement against a boss or some other  
12 employer is made and that boss or employee just  
13 shrugged it off, would you, in fact, do the same  
14 process you're doing now saying that this man made  
15 -- or woman made a report or made a statement  
16 against a person and they don't care? They didn't  
17 make a reporting incident? They didn't say it  
18 offended them? Would you, in fact -- as an attorney  
19 for this type of thing, would you, in fact, do an  
20 investigation on that statement?

21 MS. BUMGART: Mr. Chair, Senator  
22 Olsen, I think that's a fair question. It would  
23 depend on the facts and circumstances, but  
24 oftentimes we see that in the employment setting  
25 where the recipient of the conduct or the comment,

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1 maybe they have thicker skin. They don't want to  
2 become involved. They don't want to bring the  
3 report forward.

4 An employer, if it knows or has reason  
5 to know of conduct that either violates its rules or  
6 policies or rises to the level of violating the law,  
7 would have the same obligation to look into those  
8 concerns.

9 SENATOR PROZANSKI: Let me just follow  
10 up on that.

11 SENATOR OLSEN: Yeah, please.

12 SENATOR PROZANSKI: So what I'm  
13 hearing, it's not a subjective test of what the  
14 individual recipient is feeling or takes in. It's a  
15 reasonable person test, I believe you made reference  
16 to, as to the workplace, as to whether a reasonable  
17 person in a similar situation could fear as  
18 violence, threats, or whatever, within the  
19 workplace?

20 MS. BUMGART: Yes, Mr. Chair, it  
21 really is under Oregon law, and I think it's set  
22 forth in Rule 27. It is the reasonable person test,  
23 right. It's not every slight in the employment  
24 setting that's going to rise to the level of a  
25 full-stop investigation or someone being disciplined

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1 or anything like that. But the law looks at -- the  
2 reasonable person test is a balance between  
3 objective and subjective factors, with the  
4 reasonable person in that employee situation given  
5 power differentials, someone's race, someone's  
6 ethnicity, someone's gender. Depending on the type  
7 of allegations, would they believe or find these  
8 conditions to be sufficiently severe or pervasive to  
9 alter the terms and conditions of their workplace?  
10 That's how we look at that, for example, in a  
11 hostile work environment setting.

12 SENATOR PROZANSKI: All right.

13 SENATOR OLSEN: I do have other  
14 questions, but I'll wait for someone else.

15 SENATOR PROZANSKI: All right.

16 Senator Knopp?

17 SENATOR KNOPP: Thank you, Mr. Chair.

18 Brenda, you state in your report  
19 accordingly, and given the gravity of the situation  
20 as pertaining to threats of violence in the  
21 workplace -- can you tell me from the two statements  
22 where there is threats of violence in the workplace?

23 MS. BUMGART: Yes. Mr. Chair, Senator  
24 Knopp, from my perspective, the first statement  
25 which was made on the Senate floor and directed to

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1 the Senate president that -- I think the statement  
2 was along the lines of "Hell is coming to visit you  
3 personally." Given where that statement was made,  
4 the breadth of it -- again, I'm not -- I'm not an  
5 investigator with the Oregon State Police. I'm not  
6 a criminal lawyer. But from an employment setting,  
7 you have a -- you have staff sitting on the dais.  
8 You have other members. You have public coming in  
9 and out of the workplace. That to me is a threat  
10 that is made in the workplace and pertains to the  
11 workplace.

12 SENATOR PROZANSKI: Follow-up?

13 SENATOR KNOPP: Yes. Brenda, I  
14 believe you said that you did not interview Senator  
15 Boquist, so how can you determine what his  
16 definition of "hell is coming to visit you  
17 personally" means?

18 MS. BUMGART: Mr. Chair, Senator  
19 Knopp, I did not interview him, that is correct, and  
20 I made no attempt to -- to make any finding of what  
21 he meant by that. I just went purely off the public  
22 statement made. And in this case, we did have  
23 reports that -- that that statement, as well as the  
24 statement to the Oregon State Police, were causing  
25 employees to report concern about coming to work at

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1 the capital and fear for their safety and the safety  
2 of others.

3 SENATOR KNOPP: Mr. Chair.

4 SENATOR PROZANSKI: Yes?

5 SENATOR KNOPP: So if we -- it's my  
6 understanding -- and I believe I saw -- Senator  
7 Boquist apologize for that statement on the floor.  
8 Were you aware of that?

9 MS. BUMGART: I did watch -- excuse  
10 me. Mr. Chair, Senator Knopp, yes, I did watch, I  
11 think, the whole segment on OLIS. And what I recall  
12 -- and I probably won't get it verbatim -- was an  
13 apology to the Senate president but not to the  
14 remainder of the members.

15 SENATOR KNOPP: Well, his statement --  
16 was his statement not directed at the Senate  
17 president?

18 MS. BUMGART: Mr. Chair, Senator  
19 Knopp, I think the statement speaks for itself, and  
20 -- I think that it speaks for itself. I don't need  
21 to make any interpretation about the statement. I  
22 purely relied on that statement. I watched the  
23 statement. I watched the entirety of his statement.

24 SENATOR PROZANSKI: Follow-up?

25 SENATOR KNOPP: Yeah. So, Brenda, in

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1 your report it stays the statement on the Senate  
2 floor directed to President Courtney. Correct?

3 MS. BUMGART: You're referring to the  
4 first bullet point?

5 SENATOR KNOPP: Uh-huh.

6 MS. BUMGART: Yes, that is what it  
7 says.

8 SENATOR KNOPP: Okay. Thank you.

9 SENATOR PROZANSKI: Senator Manning?

10 SENATOR MANNING: Thank you,  
11 Mr. Chair. I -- my experience in the workplace, I  
12 have -- first let me make a comment. And then I  
13 have a couple of questions.

14 I've known an employer or employees  
15 that have come in to certain types of activities  
16 where the employer thought it best that they be  
17 removed from the premises pending an investigation.  
18 Not uncommon. I don't think that this is one of  
19 those things that is not uncommon.

20 When you look at the gravity of what  
21 we're looking at, there was an indication that says  
22 since we are out of session, there are no senators  
23 in the building, there are employees that are still  
24 here in the building. And not knowing who all may  
25 have made a report or claim, there is a possibility

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1 that some of those same people would still be moving  
2 in the building and, perhaps there is an opportunity  
3 for interaction contact which would put us back in  
4 the same place that you had mentioned, unhealthy,  
5 uneasy, or whatever the case may be. And we may be  
6 subject to -- under those circumstances, if nothing  
7 is done and contact is -- even though people have  
8 made reports, formal, informal, to be determined,  
9 and something does happen, we don't know. What is  
10 the liability of this body? What is our  
11 responsibility to do nothing?

12 MS. BUMGART: Thank you. Mr. Chair,  
13 Senator Manning, that is exactly the concern I had  
14 in reaching out to the branch and issuing this  
15 memorandum. The worst position for the branch,  
16 knowing -- in light of these statements and  
17 following them and knowing that employees had  
18 expressed concern -- is to do nothing.

19 And the risk, of course, which is  
20 everyone's hope that this is not the case, but it  
21 does happen in some employment settings, and there  
22 are a couple reported cases in Oregon -- if the  
23 branch does nothing and knows or has reason to know  
24 about these threats or concerns, there's -- there is  
25 risk for negligent retention, wrongful death, all

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1 sorts of claims. There could be statutory  
2 employment claims, like I mentioned, workers'  
3 compensation claims, retaliation, those sorts of  
4 things.

5 So there is an obligation upon the  
6 branch to act, and that really is the legal position  
7 from which I was coming, that as outside counsel, I  
8 believed it incumbent upon me to advise the branch  
9 of these risks.

10 SENATOR MANNING: Follow-up,  
11 Mr. Chair?

12 So based on the BOLI findings that we  
13 got that were against -- talking about workplace  
14 harassment, sexual harassment, all these things,  
15 would this also fall up under that report in terms  
16 of saying that there was an incident that happened  
17 and apparently the legislators didn't move fast  
18 enough or did nothing, and we are kind of, sort of,  
19 in a similar situation. I think there was a fine  
20 that was paid out.

21 Would this undressed, doing nothing --  
22 would this also fall up under a violation of that  
23 BOLI report?

24 MS. BUMGART: Chair Prozanski, Senator  
25 Manning, that is a very good question. I have

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1 reviewed the BOLI settlement conciliation agreement.  
2 I don't know that I'm in a position to make -- to  
3 give you my opinion about that, but I would share  
4 that I think that that is coming on the heels of the  
5 BOLI settlement and the other issues at the branch  
6 addressed at the beginning of session. I think it  
7 is prudent to keep that in mind when evaluating the  
8 situation.

9 While this is different, absolutely,  
10 but those same sorts of thoughts and concerns, I  
11 think, would be important to keep in mind here. But  
12 I don't know that I'm in a position sitting here  
13 right at the moment to give an opinion one way or  
14 the other whether or not it would run the risk of  
15 violating that conciliation agreement, but I  
16 certainly think the conciliation agreement is  
17 important to keep in mind in this situation.

18 SENATOR MANNING: Mr. Chair, is there  
19 a way that we can get some kind of a -- how  
20 (inaudible) or a legal opinion -- what the BOLI  
21 report does is something similar to this. Just  
22 hypothetically speaking, what would it look like,  
23 what our responsibilities would be? Is that  
24 practical? Is that doable? Or maybe it's something  
25 I need to look at myself?

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1                   SENATOR PROZANSKI: Senator Manning,  
2       clearly you can make that request. There is kind of  
3       a unique situation here. Based on what I remember  
4       and -- I've taken from the BOLI settlement agreement  
5       -- as to maybe some limitations on the legislative  
6       counsel as to how they advise and interpret for the  
7       branch in this specific area.

8                   Ms. Bumgart is actually our special --  
9       attorney who has -- who has been brought in to give  
10      the independence from the legislative counsel, so  
11      that request more than likely -- if we were moving  
12      forward on that -- would be for me to turn to  
13      Ms. Bumgart and say -- ask her to provide us with  
14      that.

15                  So that's, I think, the steps that  
16      would need to be taken for that to occur.

17                  SENATOR MANNING: I'd really like to  
18      hear that.

19                  SENATOR PROZANSKI: All right.

20                  First, any other follow-up? Senator  
21      Olsen?

22                  SENATOR OLSEN: Thank you. Thank you  
23      once again for the latitude.

24                  Ma'am, you're familiar with the Oregon  
25      Constitution. Correct?

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1 MS. BUMGART: Yes.

2 SENATOR OLSEN: I would hope. You're  
3 familiar with Article 4, Section 9?

4 MS. BUMGART: Mr. Chair, Senator  
5 Olsen, I am generally familiar with our Oregon  
6 Constitution. I'm generally familiar that there are  
7 certainly rights that senators and other public  
8 officials in this state have. I do not have that  
9 provision in front of me at the moment.

10 SENATOR OLSEN: Which is fine. I'll  
11 just get to the point.

12 It states in Article 4, Section 9 that  
13 "Nor shall a member for words uttered in debate in  
14 either house be questioned in any other place."

15 The statement that Senator Boquist  
16 made was in debate in the chamber on the floor. So  
17 my assumption to the Constitution, and relating to  
18 it, that the second half of the -- of the concern,  
19 the hell brought to President Courtney, would not be  
20 allowed because it was in debate.

21 So I would think that we would only be  
22 dealing with one issue, then, with the Oregon State  
23 Police. Am I incorrect in that assumption?

24 MS. BUMGART: Mr. Chair, Senator  
25 Olsen, I believe it is outside the scope of my

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1 relationship with the branch and also my expertise  
2 to give you Constitutional opinion as to whether or  
3 not Senator Boquist's statement, either all of it or  
4 a portion of it, was an exercise in free speech. I  
5 think that that is something for the -- I just think  
6 that's outside the scope.

7 My concern and my recommendation was  
8 we have threats of violence in the workplace. We  
9 have reports of employees feeling intimidated. I  
10 think ultimately if there is a finding  
11 recommendation, that that would be part of the  
12 process. But there are certain types of speech and  
13 threats of violence that do go outside of the First  
14 Amendment protections.

15 So I'm not here in any capacity to  
16 render an opinion one way or the other on that.

17 SENATOR PROZANSKI: Follow-up?

18 SENATOR OLSEN: Yes. Thank you very  
19 much. I appreciate your -- I appreciate your  
20 comment on that. But on the floor we sometimes get  
21 heated.

22 I was chastised because I used the  
23 word "hypocrisy," and I thought it was a very  
24 legitimate term to use, but I was chastised for the  
25 fact that it, perhaps, could impugn my colleagues

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1 and I would never want to do that because we all  
2 take this job very seriously. We try do the best we  
3 can. And one person's opinion shouldn't outweigh  
4 another person's opinion, so we try to avoid getting  
5 into those conflicts.

6 But in the fact that -- it is a fact  
7 that in the Constitution it says, "Those words  
8 uttered in debate," and it's exactly what we were  
9 doing, we were debating issues, we were talking, one  
10 could lay on a definition of "hell brought down on  
11 you." Whether that rises to the occasion of a  
12 threat, I find it difficult to believe. But once  
13 again, it's uttered in debate.

14 We've argued many times -- I've been  
15 here eight years, and Senator Prozanski and I have  
16 gone around and around many times on different  
17 issues. But the fact is that since this was  
18 sincerely directed at the President, the other 29 of  
19 us -- or at that time 28 of us -- did not receive  
20 that wrath. It wasn't directed at us.

21 And the senator certainly did  
22 apologize in the debate -- and I repeat, in the  
23 debate -- that was taking place on the floor. So my  
24 conclusion would be that since it was on the floor  
25 and we were in debate, that this particular report,

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1 or non-reports as the President did not report, be  
2 removed from this action.

3 And then when one speaks to the second  
4 action on the OSP, it was made in this building, but  
5 it was directed that if they came to his home in The  
6 Dalles.

7 So my question is how does that relate  
8 back to this building, then, other than the fact  
9 that he was a senator and stated it in this  
10 building?

11 MS. BUMGART: Mr. Chair, Senator  
12 Olsen, again, I'm not here to opine on the  
13 Constitutional analysis, but I would not look at it  
14 that narrowly.

15 When we're talking about threats in  
16 the workplace or conduct that maybe intimidating to  
17 employees, I think we need to look more broadly  
18 versus just, you know, the statement was directed to  
19 President Courtney, for example.

20 There are employees who sit up with  
21 President Courtney. There are employees who walk in  
22 and out of the chamber. There are other senators  
23 present. The reports that I received, which I found  
24 to be credible, are if he's willing to threaten the  
25 president of the Senate, if he's willing to threaten

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1 the Oregon State Police, what will stop him from  
2 harming anyone?

3 SENATOR OLSEN: Mr. Chair, I object to  
4 that.

5 SENATOR PROZANSKI: Hang on one  
6 second. Everyone that's here, you're here to be  
7 observing. If you have comments that you want to  
8 make, you need to leave the room. One thing I will  
9 not tolerate is having individuals make comments  
10 from the gallery while we're ongoing with this  
11 investigation.

12 We're glad that you're here, but  
13 please respect our rules. Thank you.

14 Senator Olsen?

15 SENATOR OLSEN: Mr. Chair, I object to  
16 that statement because it's -- it's an assertion  
17 predicated on your own -- what's the term I want to  
18 use -- on your own decision that you made it's a  
19 credible threat. Now you're passing on this  
20 assertion that he could possibly do something else  
21 in the workplace, and that's not right. Because  
22 this is not a court of law, and what you're saying  
23 is your own opinion, and it's hearsay.

24 SENATOR PROZANSKI: All right. So  
25 this isn't a court of law, and we shouldn't be

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1 treating the witness as --

2 SENATOR OLSEN: I appreciate that.

3 But she can't be making statements on the record  
4 like that.

5 SENATOR PROZANSKI: She can. That's  
6 her statement, that's her position as to her --  
7 being our counsel, and you can accept it or not  
8 accept it, but that is what she's here to tell us.

9 SENATOR OLSEN: Then I challenge that  
10 statement because it's an assumption she's making.

11 SENATOR PROZANSKI: That's fine.

12 All right, let me just follow up on a  
13 couple of things.

14 First of all, regarding the -- the  
15 addressing of the President, our rules do, in fact,  
16 require that an individual member not address an  
17 individual member on the floor directly. All  
18 comments have to go through the podium through the  
19 President.

20 And so there has been situations and  
21 individuals have said to me as to were those  
22 statements really directed to the President  
23 exclusively or did they also include other members?  
24 So that's one of those things I think we all have to  
25 take into consideration in the context -- I believe

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1 all of us were on the floor at the time -- as to  
2 what and how we would interpret that.

3 Now, the other thing I want to, I  
4 guess, ask more of a broader perspective. In your  
5 work as counsel for employment -- in the employment  
6 law area, do you believe that an elected official,  
7 because of their position, would have immunity  
8 through the First Amendment to be -- to make  
9 statements that would be perceived in other areas of  
10 employment that could be considered intimidating,  
11 threatening individuals in the workplace?

12 MS. BUMGART: Chair Prozanski, I think  
13 that's a very nuanced legal question, so a  
14 Constitutional issue, and again, my opinion is not  
15 -- on that I'm not here. But I will say from an  
16 employment perspective, looking at this stage, we  
17 are at the beginning. We are at this -- you know,  
18 this is an A to Z investigation. We are at the  
19 outset; that it is -- that there needs to be a  
20 balancing of interests and when the branch has the  
21 knowledge that it has.

22 And all we're looking at is an interim  
23 recommendation and steps to ensure the integrity of  
24 the investigation, steps to ensure that the  
25 workplace here at the capital is free from -- excuse

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1 me -- threats of intimidation. That's how we're  
2 looking at it. And I would think that that would  
3 warrant the same kind of evaluation, and in a way,  
4 and setting aside for a moment First Amendment  
5 immunity -- those Constitutional issues, which are  
6 very important -- if we're looking at this and  
7 comparing a senator to the CEO of an organization, a  
8 private organization, if these comments were made by  
9 a CEO, undeniably that CEO would be put out on leave  
10 pending investigation, and if these proved true,  
11 would be fired.

12 And I view -- I guess if we're looking at  
13 the pecking order here at the capital -- that  
14 certainly a senator -- a sitting senator -- an  
15 elected public official in Oregon -- there are --  
16 there's a heightened level of obligation.

17 Certainly in a regular employment setting,  
18 supervisors, managers, and certainly executives of  
19 the organization are held to a higher account  
20 usually by the employer and law. And I would view  
21 that similarly here.

22 SENATOR PROZANSKI: All right. Other  
23 questions?

24 SENATOR MANNING: Just real quick.  
25 Mr. Chair, thank you so much. Ms. Bumgart, thank

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1 you so much.

2 What I'm hearing from you is that  
3 based off the evidence -- well, let me take that  
4 back -- evidence.

5 Based off the findings from the  
6 information, that's the only thing that I have been  
7 receiving from you that you have interpreted as  
8 potential violation of Rule 27.

9 Now, when we -- we talk about on the  
10 floor, you know, things that we see on the floor,  
11 that it's uninhibited -- things like that -- I would  
12 say that it depends on who is saying it.

13 Because there was a case where I made  
14 a statement on the floor, and later on a colleague  
15 read it back from a news article. So I don't think  
16 that that is a proper use of that.

17 If you -- if you can't do it for all,  
18 then you shouldn't claim it for any. So I want to  
19 just make sure that we were -- that I got that out  
20 there. This is not a court of law. It's -- we're  
21 looking at hearing an inquiry.

22 Your report back thus far, I want to  
23 commend you for the work that you have done. And I  
24 know that we have a long ways to go, so I just want  
25 to put that out on the record because it seemed to

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1 be, at times, things that are being directed at you  
2 that's kind of trying to mischaracterize what you're  
3 saying.

4 There's a term for that called  
5 gaslighting. So I want you to stay focused and  
6 continue on unbiased and just go where the evidence  
7 leads us to. Thank you.

8 SENATOR PROZANSKI: Senator Olsen?

9 SENATOR OLSEN: Yeah. Thank you. One  
10 more question, please.

11 If, hypothetically, Senator Boquist  
12 and Senator Courtney were at Magoo's having a beer.  
13 And --

14 SENATOR PROZANSKI: Local watering  
15 hole.

16 MS. BUMGART: I went to Willamette  
17 undergrad and law school, so I'm aware of Magoo's.  
18 I've been there many times.

19 SENATOR OLSEN: Yeah. There we go.  
20 It just popped into my head.

21 Say they were having a beer together,  
22 and Senator Boquist looks at Senator Courtney and  
23 says, "If you do that, hell is going to come down on  
24 you." Would that be a workplace violation  
25 considering the fact that the bar is always filled

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1 and other people would have heard it?

2 MS. BUMGART: Yeah. Chair Prozanski,  
3 Senator Olsen, it depends. I would not liken that  
4 situation to what happened here. And if two  
5 colleagues are out having a beer and having words, I  
6 think that we would be unlikely finding ourselves  
7 having this conversation, but that's not what  
8 occurred.

9 SENATOR OLSEN: Follow-up then.

10 If -- if Senator Boquist had published  
11 that or Tweeted that out, that "Hell would come down  
12 on you," would that make it different? Would that  
13 make it a workplace violation?

14 MS. BUMGART: Mr. Chair, Senator  
15 Olsen, so the same statement Tweeted versus made on  
16 the Senate floor?

17 SENATOR OLSEN: Yes. Yes.

18 MS. BUMGART: I think I would have the  
19 same concern to the extent it reached -- the mode of  
20 communication is not necessarily dispositive.  
21 Right? I mean, the threats can come via email.  
22 They can be through social media, as we often see  
23 these days quite commonly, or they can be  
24 face-to-face.

25 SENATOR OLSEN: Thank you.

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1 SENATOR PROZANSKI: Senator Knopp?

2 SENATOR KNOPP: Thank you, Brenda.

3 You stated earlier that you did not receive reports  
4 from the Senate president or from the Oregon State  
5 Police. Did you interview the Senate president or  
6 the Oregon State Police in your -- in issuing your  
7 report?

8 MS. BUMGART: Chair Prozanski, Senator  
9 Knopp, no, I did not interview either the Oregon  
10 State Police or President Courtney.

11 SENATOR KNOPP: Okay. Thank you.

12 SENATOR PROZANSKI: So, Brenda, my  
13 understanding is that what you base this on is on  
14 basically what some people would say on the face of  
15 the document -- or the statements themselves that  
16 were recorded on video that you reviewed. And you  
17 solely and exclusively came to us in your capacity  
18 as our legal counsel for employment situations and  
19 ensuring that we were aware that these two  
20 statements that were made, one on the floor and one  
21 outside of the chamber within a couple of hours,  
22 caused you concerns for the potential risk to the --  
23 to the branch on the liability issue as well as the  
24 safety of those who are working within the building,  
25 some who brought reports to you, others who may not

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1 have?

2 MS. BUMGART: Chair Prozanski, that is  
3 a correct summary.

4 SENATOR PROZANSKI: All right.

5 SENATOR OLSEN: Can I ask a question,  
6 Mr. Chair?

7 SENATOR PROZANSKI: Yes.

8 SENATOR OLSEN: I've got another one.

9 SENATOR PROZANSKI: Another last one?

10 SENATOR OLSEN: Yeah, another last  
11 one.

12 SENATOR PROZANSKI: Okay.

13 SENATOR OLSEN: Because you've talked  
14 about in your -- in your statement -- in your  
15 memorandum you said that have caused members and  
16 branch employees to report concerns, are those  
17 reports reported to superiors or were they directed  
18 to you, or were they written and documented, or were  
19 they undocumented and just verbally passed along?

20 MS. BUMGART: Chair Prozanski, Senator  
21 Olsen, it was a combination, except I did not  
22 receive any reports to me directly at the time  
23 between June 19th, when the statements were made,  
24 and the usual issuance of my memorandum. They were  
25 some oral reports, some email reports, some by

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1 appointing authorities. My understanding is staff  
2 had come to them, so they were fulfilling their  
3 obligation what they saw, under Rule 27, to pass it  
4 along. And then some were directly from -- from  
5 staff or other members expressing their own  
6 individual concerns.

7 SENATOR OLSEN: Follow-up for  
8 clarification. They were not directed to you? They  
9 were given to other people and then they verbally  
10 communicated them to you. Is that correct?

11 MS. BUMGART: Chair Prozanski, Senator  
12 Olsen, it is correct that no reports were sent  
13 directly to me. They were either communicated  
14 orally or passed on via email.

15 SENATOR MANNING: Just one final one.

16 SENATOR PROZANSKI: Senator Manning?

17 SENATOR MANNING: Mr. Chair, I noticed  
18 that when there was talk of this committee getting  
19 together, you and I spoke one-on-one briefly  
20 (inaudible) there was a chance that this committee  
21 will come about. I've not spoken with anyone else  
22 since that point in time since we spoke.

23 I know -- well, I think I'm aware that  
24 you may have spoken to each one of us individually  
25 about what the committee is going to be pulled for,

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1 what it's going to be designed for. My question is  
2 that how many, if any, have had this conversation  
3 prior to the committee meeting with Senator Boquist?

4 SENATOR PROZANSKI: Are you asking of  
5 the members that are here who have had contact with  
6 him?

7 SENATOR MANNING: Yes, and talked  
8 about this committee.

9 SENATOR PROZANSKI: Yeah. As I stated  
10 on the record at the beginning, Senator Boquist, I  
11 believe we had two conversations that were direct.  
12 One was on the 30th of June, at which point I wanted  
13 to ensure that he had the notice of the posting of  
14 the hearing as well as the two documents that went  
15 out, which was the Confidential Memorandum that  
16 we've referred to today, as well as a cover letter  
17 -- or I should say cover email that's dated the same  
18 date, June 25th, that came out in the legislative  
19 administration and -- at that point.

20 And then since then, I believe Senator  
21 Boquist and I have had one other telephone  
22 conversation. I forget the date. I don't have that  
23 in front of me. And then there has been some  
24 correspondence by email.

25 What I wanted to ensure, as I stated

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1 at the beginning, that this is not a conduct, formal  
2 or informal -- not that we'd have the informal in  
3 front of us -- complaint, but was a report. And  
4 that's where I wanted to correct the record because  
5 when I was in his office on the 30th, I  
6 unfortunately used the term "complaint," and I  
7 should have technically been using the term  
8 "report."

9 And so there has been some  
10 communication between myself and Senator Boquist by  
11 email clarifying some different perspectives that  
12 each of us shared with each other. That's all that  
13 I've had.

14 So I'm not sure if the other members  
15 want to comment. I will also say Senator Knopp and  
16 I spoke once together on the floor. I believe it  
17 was on the 30th prior to me speaking with Senator  
18 Boquist.

19 And Senator Olsen and I have not had  
20 any direct conversation regarding this topic since  
21 his appointment by the president.

22 SENATOR MANNING: And just to follow  
23 up. Just listening to the types of questions that  
24 have been presented, I would really be interested to  
25 understand if the rest of the committee has had

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1 direct conversation with Senator Boquist regarding  
2 this prior to this meeting today?

3 SENATOR OLSEN: Absolutely not. I  
4 have not talked to him. I've gotten all my  
5 information off of OLIS. It's right here in front  
6 of me. All the -- all the referrals, anything that  
7 I have, is off of OLIS. And I have not talked to  
8 him.

9 SENATOR KNOPP: Yeah. Mr. Chair,  
10 Senator Manning, I have not had any contact with  
11 Senator Boquist.

12 SENATOR PROZANSKI: All right. All  
13 right. If there's no other questions for the -- for  
14 counsel --

15 MS. BUMGART: Chair Prozanski, may I  
16 just clarify one point --

17 SENATOR PROZANSKI: Please.

18 MS. BUMGART: -- because I don't want  
19 there to be any misstatement or inference.

20 To the earlier question by Senator  
21 Olsen about the scope that caused some comments from  
22 the gallery, I was not issuing my opinion in any  
23 way, shape, or form as to what -- I have no opinion  
24 as to what Senator Boquist -- whether he would act  
25 upon these or not. God, we hope not.

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1 My point was what employees had  
2 reported. So I don't want there to be any confusion  
3 when I mentioned that employees had reported  
4 concern, that if these statements were made by him  
5 in public to the Senate President and to the Oregon  
6 State Police, the concern was for their own safety,  
7 if he would make those statements. That was my  
8 point.

9 And I just want to make sure that the  
10 record is clear that I'm not rendering any opinion  
11 as to whether those employee fears are valid or not.  
12 I'm just purely stating those are some of the facts  
13 I have for consideration. When I mentioned there  
14 are employee reports, those were some of the reports  
15 I was receiving.

16 SENATOR PROZANSKI: So let me just  
17 follow up on that. I mean, I think that the thing  
18 that's difficult for many individuals is that we're  
19 having a mix of different types of law and  
20 perspectives and expectations in the employment area  
21 which is, again, new to me, I think new to many of  
22 us, as to what our obligations and requirements are.

23 There are overlays as to the need for  
24 bringing forward, as you did as counsel, to the  
25 employer, which would be us, the risk that we have

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1 by not taking action based on individuals who are  
2 within that workplace that could be subject to these  
3 type of fears, concerns, and potential acts.

4 SENATOR OLSEN: Mr. Chair?

5 SENATOR PROZANSKI: Yes.

6 SENATOR OLSEN: I am not a lawyer.  
7 Make it clear. I do watch Perry Mason. He's cool.  
8 I like him. I'm not a lawyer. But the comment that  
9 the attorney just made "God, I hope not," if this  
10 was a court of law, I would have objected, objected,  
11 because you were implying bias by putting that in  
12 there. And I would have objected to the Court and  
13 let the judge be the decision, but this is not a  
14 court of law.

15 But I just would hope that -- that you  
16 eliminate -- I mean, you're supposed to be a neutral  
17 arbiter. I would hope you would eliminate all of  
18 that and go down the line like you're supposed to  
19 and find what's true and what's not true.

20 I find it discerning that you don't  
21 have the number of reports or any reports whatsoever  
22 to tell us about other than the fact that someone  
23 said that they are concerned.

24 SENATOR PROZANSKI: Senator Olsen, I  
25 think, again, we're -- we're starting to mix stuff

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1 again --

2 SENATOR OLSEN: Yeah.

3 SENATOR PROZANSKI: I mean, the bottom  
4 line is what's happening on the complaints  
5 themselves, if they are going to come forward, will  
6 be judged on those days at the time we get them. To  
7 try to bring in and bootstrap in stuff that's being  
8 under an investigation into what I call an interim  
9 step based on the attorney saying we are at risk if  
10 we do not take action based on these two threats  
11 that were made in those -- in the venues that they  
12 were made --

13 SENATOR OLSEN: I agree. So what is  
14 our goal? What is the goal of this committee today?

15 SENATOR PROZANSKI: The goal is --

16 SENATOR OLSEN: You say we're going to  
17 do a work session, but what are we going to work on?

18 SENATOR PROZANSKI: The goal is to  
19 determine what, if any, other steps do we have as --  
20 I mean, I say we, as a committee, to the legislative  
21 branch, to actually take action to ensure the safety  
22 of individuals within the workplace while the  
23 investigation on the potential complaints are going  
24 forward.

25 In other words, we -- based on what

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1 she has given to us, the statements that were --  
2 that are not in doubt because they are videotaped,  
3 put out a concern to -- as we heard -- sorry, I  
4 didn't write that term down -- I want to say the  
5 managers, individuals such as members, staff for the  
6 members, the legislative branch employees who work  
7 within this workplace, meaning the state capital --  
8 as to whether we should be looking at any type of  
9 steps to ensure the workplace is free of those  
10 concerns during the period of the investigation and  
11 whether there is a need at this point -- and I think  
12 it's very fair to say we now have a number of days  
13 that have passed since those statements were made on  
14 the 19th of June.

15 And so those are the factors that we  
16 need to take into consideration. Clearly, counsel  
17 has told us it doesn't matter, per se, when they  
18 were said, but in the context of what was there and  
19 what steps have or haven't been taken. And that's  
20 part of the stuff that we'll be talking about.

21 SENATOR OLSEN: Well, Mr. Chair, for  
22 clarity, I believe counsel has mentioned the  
23 concerns from employees and reports, but we don't  
24 see the reports, so I'm concerned that where are  
25 they? Where we're taking actions against someone

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1 without physical documents stating that "I feel  
2 concerned about this and I made that report to my  
3 superior and my superior has since passed that on to  
4 you," that report should be available to us to see  
5 what exactly their concern was.

6 MS. BUMGART: Mr. Chair, may I just  
7 say briefly --

8 SENATOR PROZANSKI: Yes.

9 MS. BUMGART: -- so my -- and I think  
10 I said this earlier, but if not, I really want to  
11 underscore. My recommendation would be the same  
12 whether I had a physical email in my hand or not,  
13 whether it was 2 employees or 15 employees.

14 My recommendation is based on public  
15 statements that were made and the risk that the  
16 branch has if it -- if it doesn't address those.  
17 That's it.

18 I understand there is -- I understand  
19 where you're coming from as far as wanting to know  
20 more information about the reports and that. Well,  
21 that is why we have the investigatory process. But  
22 my recommendation would be absolutely the same even  
23 if no employee came forward with a formal or  
24 informal report.

25 SENATOR PROZANSKI: Yeah, my

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1 understanding, and what I would take away from this  
2 is, your interim memorandum to us is based on,  
3 again, public statements that were made that are not  
4 in dispute, and it's the context of what was said in  
5 the context of ensuring a workplace that's free of  
6 threats of violence, intimidation, or retaliation.

7 MS. BUMGART: That is correct, Chair  
8 Prozanski.

9 SENATOR PROZANSKI: All right. Any  
10 other comments?

11 Thank you very much. I assume that  
12 you'll be here if the committee chooses to ask you  
13 to come back up?

14 MS. BUMGART: Yes, I will remain.  
15 Thank you very much.

16 UNIDENTIFIED SPEAKER: Thank you.

17 MS. BUMGART: Thank you.

18 SENATOR PROZANSKI: All right. So  
19 based on where we're at at this point and knowing  
20 what the context of what our mission is at this  
21 point as to determining what, if any, interim steps  
22 we should be taking based on this confidential  
23 memorandum report, again, regarding Senator Brian  
24 Boquist, interim findings and recommendations dated  
25 June 25th of this year, the Chair is going to give

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1 Senator Boquist the opportunity, if he'd like, to  
2 come forward to make any statements that he'd like  
3 to make to us as well as potentially answering any  
4 questions.

5 SENATOR BOQUIST: Thank you,  
6 Mr. Chair. Senator Prozanski, senators, citizens  
7 present, first, let me thank the Oregon State  
8 troopers for their service and professionalism over  
9 the last two months.

10 Whether Kate Brown or Peter Courtney  
11 issued troopers an illegal order will now be  
12 determined in a court of law.

13 Second, let me thank the at-will staff  
14 in the Oregon legislative assembly for their service  
15 and professionalism in the face of employee abuse,  
16 sexual harassment, retribution that they have faced  
17 since last year, to a complete failure of the Senate  
18 leadership.

19 Third, now to the alleged employment  
20 or political hearing today. Senator Prozanski was  
21 kind enough last Sunday to visit me in my capital  
22 office, handed me three pages of what he knew at the  
23 time: a draft agenda, a letter signed by  
24 Ms. Bumgart of Stole Reeves -- one page of it. He  
25 did provide a second page later. And that's a

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1 photocopy problem. It's not the good senator's.  
2 Okay? -- and a memo signed by Ms. Nieling that also  
3 identified Mr. Johnson -- Dexter Johnson --  
4 legislative counsel as well participating. That is  
5 about the total -- that is just about the total sum  
6 of the due process or my knowledge of Senator  
7 Courtney's intent to this proceeding and his task  
8 into the good chair. This formal public record  
9 outlines these facts that will now be used again in  
10 a court of law.

11 Fourth, last week my wife, staff, and  
12 I issued formal complaints against the Oregon State  
13 Senate with the appropriate federal civil  
14 authorities.

15 Fifth, on Friday I filed a lawsuit in  
16 the civil court against the Honorable Peter  
17 Courtney, and many of those involved today are  
18 listed in the lawsuit. None of you gentlemen  
19 except, my apologies, Mr. Chair, our conversation.

20 The civil court action will be amended  
21 after this alleged hearing today, or whatever is  
22 today. Appropriate legal service has been executed.  
23 I have asked the Oregon Department of Justice to  
24 provide myself and the court the name of the  
25 attorney who will represent the majority in the

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1 Oregon State Senate, or will the attorney general  
2 recuse themselves from defending Senator Courtney as  
3 they have in past harassment complaints.

4 All inquiries and questions regarding  
5 this political or employment matter will be  
6 submitted through your court-recognized lawyer from  
7 this point forward. We are now formally in a court  
8 of law.

9 Lastly, for the public record, for a  
10 long time the Oregon State Police superintendent,  
11 Marion County district attorney, other district  
12 attorneys, federal authorities, and other legal  
13 authorities, know full well I've offered full  
14 cooperation in any legal probable cause law  
15 enforcement action, any judge ordered action, and  
16 any civil matter.

17 I look forward to seeing this matter  
18 in the court. Thank you. Gentlemen, have a good  
19 day.

20 SENATOR PROZANSKI: All right. Thank  
21 you.

22 I'm assuming, Senator Boquist, that  
23 concludes your testimony and statement, and at this  
24 point you do not want to entertain any questions  
25 just for the record?

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1                   SENATOR BOQUIST: I believe,  
2           Mr. Chairman, you're an attorney and you have  
3           counsel here, and you know how the court proceeding  
4           works. Thank you. There will be no questions.

5                   SENATOR PROZANSKI: Thank you.

6                   That will conclude the public hearing  
7           portion of our hearing today, so I'm going to go  
8           ahead and close the public hearing. And at this  
9           point -- so at this point we're going to recess the  
10          committee. It's about 10:12, and I'm going to say  
11          why don't we break for about 30 minutes and that  
12          we're in recess until 10:45.

13                               --oOo--

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1 STATE OF OREGON )  
2 ) ss.  
3 County of Lane )  
4  
5

6 I, Sara Fahey Wilson, CSR, a Certified  
7 Shorthand Reporter for the State of Oregon, certify  
8 that the transcript is a true record of the  
9 transcription of the audio recording; that the  
10 foregoing transcript consisting of 65 pages contains  
11 a full, true, and correct transcript of said audio  
12 recording so reported by me to the best of my  
13 ability on said date.

14 IN WITNESS WHEREOF, I have set my hand  
15 this 24th day of July 2019, in the City of Eugene,  
16 County of Lane, State of Oregon.  
17  
18  
19  
20  
21

22 

23 Sara Fahey Wilson, CSR

24 CSR No. 06-0400

25 Expires: March 31, 2020